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ELECTION COMMISSION, INDIA

NOTIFICATIONS

*New Delhi, the 9th January, 1953*

**S.R.O. 112.**—WHEREAS the election of Shri Ramalingam as a member of the Legislative Assembly of the State of Madras, from the Tanjore constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri R. Swaminatha Merkondar, Koonampatti, Sengipatti Post, Tanjore District, Madras State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, TIRUCHIRAPPALLI

PRESENT:—

Sri H. Ananthanarayana Ayyar, I.C.S.—*Chairman.*

*Members*

Sri L. S. Parthasarathi Ayyar, B.A., B.L.

Sri V. C. Viraraghavan, B.A., B.L.

ELECTION PETITION No. 18 OF 1952

*Friday, the 26th day of December, 1952*

BETWEEN:—Sri R. Swaminatha Merkondar—*Petitioner.*

AND

*Respondents.*

1. Sri S. Ramalingam.
2. Sri Marimuthu.
3. Sri Gopalakrishnan.
4. Sri Shanmugham.
5. Sri Dharmalingam.
6. Sri Govindan.
7. Sri Lakshmana Karuppatiyar.
8. Sri Narayanasami.
9. Sri Natarajan.
10. Sri Singaravelu.
11. Sri Srinivasachari.

This Election Petition coming on for hearing on the 10th, 11th, 12th, 13th, 14th, 15th and 18th days of November, 1952, and on the 6th, 19th, 20th and 22nd days of December, 1952, in the presence of Sri K. V. Srinivasa Ayyar, and Sri S. Lazar, Advocates for the petitioner, and of Sri G. M. Vridhachalam, Advocate for the 1st respondent, of Sri S. Kasturirenga Ayyangar, Advocate for the 8th respondent, and respondents 6 and 9 appearing in person, and the other respondents not appearing either in person or by pleader, and the petition having stood over to this day for consideration, the Tribunal passed the following Order:—

The petitioner, R. Swaminatha Merkondar, has filed this election petition for a declaration that the election of the 1st respondent S. Ramalingam, to the Madras Legislative Assembly from the Tanjore Constituency in the election held on 12th January 1952 is void and that he himself (petitioner) has been duly elected.

2. The Tanjore Constituency is a double member constituency. One was a Reserved seat. The contestants for this seat were respondents 2, 4, 5, 6 and 8. Of these, 2nd respondent was declared duly elected to the Reserved seat. For the other seat, which was a general seat, the contestants were petitioner and Respondents No. 1 (Ramalingam), 3 (Dr. Gopu *alias* Gopalakrishnan), 7, 9 (Natarajan), 10 and 11. As per the results declared by the Returning Officer, the votes secured by the petitioner and 1st respondent were as follows:—

Name of candidate	No. of valid votes secured by candidate	Invalid votes			Total invalid votes
		Cumulative votes	Mutilated votes	Wrong type of ballot papers used.	
Petitioner	... 23,332	1,409	1	2	1,412
1st Respondent	... 24,585	531	...	3	534

The Returning Officer declared S. Ramalingam (1st Respondent) as duly elected. At the Election, the 1st Respondent stood as a candidate of the Communist party, and the petitioner as a candidate of the Congress party. At the same time as the election to the Madras Legislative Assembly, an election was also held from the Tanjore Constituency for one seat in the Union Parliament. In that Election, Sri R. Venkataraman (P.W. 24) was the Congress candidate. Sri R. S. Sarma was an Independent candidate. Dr. Dasan was the other candidate.

3. The petitioner is a resident of Koonampatti, in Tanjore District. He is an owner and cultivator of land. The 1st Respondent was originally an employee (Relieving Station Master) in the South Indian Railway. His services were terminated by an order Exhibit B5 dated 13th April 1951 passed by the General Manager, South Indian Railway as follows:— " \* \* \* you are therefore given one Month's pay in lieu of notice \* \* \*, and your service will terminate on the 1st May 1951". The joint family of the 1st respondent and his brothers and father (who is also a retired railway servant) owns 3 or 4 acres of land.

4. For the purpose of this petition, we are concerned with the activities in villages connected with the polling stations at (1) Vallam, (2) Thennankudi, (3) Koonamangalam, and (4) Budalur.

5. The petitioner raised various pleas in his petition. He was directed to give further and better particulars. Accordingly, he gave the particulars in the form of a "supplemental list" dated 25th September 1952. The 1st respondent is the main contesting respondent. He filed a counter which resulted in the following issues being framed:—

- (i) Whether, at a public meeting at 8 P.M., on 4th January 1952, near Kalliamman Temple in Thennankudi, Pillayarnatham Vattam, the 1st Respondent and/or R. Rajagopalan (who worked for him), made promises of land and cattle to those who vote for the 1st Respondent (as alleged in para III (3) of the petition and item 2 of the list and supplemental list)?
- (ii) Whether, at a public meeting at 8 P.M., on 4th January 1952, near Kalliamman Temple in Thennankudi Pillayarnatham Vattam, the 1st Respondent held out threats of social ostracism and excommunication or expulsion from caste or community or fine by the community, as alleged in para III(3) of the Petition, and item 2 in the list and supplemental list to the petition filed by the petitioner?
- (iii) Whether the 1st Respondent was holding an office of profit, *viz.*, as Relieving Station Master in the South Indian Railway, under the Government of India at the time of nomination (or of election)?

(iv) Whether the 1st Respondent or his agent or any one on his behalf, hired or procured vehicle Car No. M.D.O. 1433 for conveyance of electors to the Polling booth in Vallam on the date of election, 12th January 1952, and a pleasure car for polling booths in Budalur,

(v) Is the petitioner entitled to all or any of the reliefs prayed for in para 7 of the petition?

In para III (5) of his petition, the petitioner also made a vague allegation that "the candidates or their agents or counting agents do not appear to have been given reasonable opportunity to inspect ballot papers." Subsequently, he filed I.A. No. 1 of 1952 on 11th October 1952 praying as follows:—"to permit the petitioner to inspect and scrutinise with his counsel, all the ballot papers including valid and rejected votes in the said elections." On 18th November 1952 we dismissed that I.A.

6. Respondents 2 to 5, 7, 10 and 11 did not file any counter, though served with notice. Respondents 6, 8 and 9 filed counters which did not result in any issues or evidence. They did not take part in cross-examining any of the witnesses of petitioner or of 1st respondent or attempt to let in any evidence. Of these three, the 5th respondent is the only candidate concerned in the general seat. He simply pleaded that the system of voting in a two member constituency led to a lot of confusion and that the election ought to be set aside on this ground alone. This plea did not disclose any issue which could be framed or tried by this tribunal.

7. Respondents 6 and 8 were candidates only for the Reserved seat. The 8th respondent supported some of the contentions of the petitioner and tried to explain as to why he got less votes than the 2nd respondent. The 6th respondent filed a somewhat similar counter. (These statements did not lead to any issues).

8. The petitioner deposed as P.W. 23 and examined 23 other witnesses. On his behalf, five documents, i.e., Exhibits A1 to A5 were marked.

9. The 1st respondent deposed as R.W. 11, and examined besides, 10 other witnesses (R.Ws. 1 to 10). On his behalf, Exhibits B (1 to 5) were marked.

10. Issue 3.—Exhibit B5 is the order passed by the General Manager, South Indian Railway, intimating that the services of the 1st respondent "will terminate on 1st May 1951". 1st Respondent, as R.W. 11, swore that his services were terminated accordingly on 1st May 1951, i.e., long before his nomination and election and that he did not prefer any appeal from that order. There is no evidence contra. No arguments were even addressed by the learned Advocate for the petitioner on this issue. We find this issue in the negative.

11. Issues 1 and 2.—Beyond doubt or dispute, 1st respondent held an election propaganda meeting in the Kaliyamm Temple at Thennankudi on 4th January 1952. He and Rajagopalan addressed the gathering.

12. P.Ws. 7, 8, 9, 10, 20, 21 and 22 say that they attended this meeting. P.Ws. 9, 10, 20, 21 and 22 deposed to the following effect:—Rajagopal first addressed the meeting. 1st Respondent spoke next. He told the audience, which consisted to a great extent of Harijans from Siralur and other Cheris, "Do not vote for Congress. Vote for us (i.e., Communists). We will give 5 acres of land and one pair of bulls ( ) for each Adi-Dravida who votes for us (i.e., Communists)". The wording is as given by P.W. 9 in his deposition. But P.W. 7 who is a ryot of Pillayarnatham said that the 1st Respondent spoke only as follows:—"If votes are given to us in the forthcoming elections, and, if we, in consequence, come into power, we will do a lot of benefit to poor people. We will distribute land among the Adi-Dravidas. We will give cattle ( ) to those who do not have them. \* \* \* I will give 5 acres of land to each person. I will get cattle for the Pallars and Parayars." P.W. 7 further explained as follows:—"The 1st Respondent said that the land would be redistributed among people and that rich peoples' land would be given to the poor." He said "We will bring such legislation by Government." P.W. 8 deposed in chief-examination that the 1st Respondent said "I will get land for the landless and cattle for those who have none. \* \* \*". In Cross Examination P.W. 8 added that the 1st Respondent said at the meeting "I will get 5 acres of land each for those who vote for me and support me. We will get the land by taking from the rich people( )".

R.W. 2 deposed as follows:—"The 1st Respondent said \* \* \* If you vote me into power, it will be good for the poor \* \* \* Rich men have lot of lands. Poor people do not have any lands. If votes are given to us, poor people can eat well and be comfortable. Poor people can do cultivation of lands instead of doing work for coolly under the rich people." P.W. 7 is the first witness who was examined to speak about the speeches of the 1st Respondent and Rajagopalan at the Thennankudi meeting. It is significant that his evidence does not

show at all that 1st respondent promised land and cattle, only to those who voted for him or to those who voted for his (Communist) party. It is also worth noting that when the petitioner's Advocate examined P.W. 8 (i.e., in chief-examination), he did not elicit from him that the 1st respondent promised land and cattle only to those who voted for him (1st respondent) and his (Communist) party. If really the 1st respondent had stated in the meeting that he would give land and cattle only to those who voted for him and his party, the fact must have been stated by P.W. 7 and must have been elicited from him. Therefore, the mention that he made such promise to only such persons who voted for him has to be treated as an addition and development in the evidence of the later witnesses. We decline to believe this addition and development. On the other hand, P.W. 8 does not say that the 1st respondent offered to get any cattle or anything else for Pallars or Parayars in particular. So, we believe (P.W. 7's version) that the 1st respondent promised to give land to the landless and poor and do not believe his statement that he offered cattle for Harijans in particular. We believe the version of R.W. 2 as to the contents of the 1st respondent's speech at the meeting.

13. The question is whether the offer of the 1st respondent in making the above speech amounted to the corrupt practice of bribery as defined in Section 123 (1) of the Representation of People Act. Under the above Section, an act constitutes bribery if it is " \* \* \* offer or promise by a candidate \* \* \* of any gratification to any person whomsoever with the object directly or indirectly of inducing \* \* \*".

(b) An elector to vote (or refrain from voting) at an election."

The 1st respondent was a candidate and he spoke at the election meeting. His object was certainly to appeal to electors to vote at the election. There was nothing illegal in it. As a matter of fact the aim of most candidates in addressing election meetings is not different. In his speech, the 1st respondent offered to secure for poor and landless people, land and cattle. The only question is whether this amounted to "offer of gratification to any person whomsoever." In Webster's English Dictionary, the meaning of the word 'gratification' is given as "Something that pleases". Of course, the people whom he mentioned as his intended beneficiaries (i.e., poor and landless people) were made up of persons. If the term (gratification to any person whomsoever) is mechanically and narrowly interpreted, it can cover the poor people and landless. But, with such a narrow and mechanical interpretation, it can be made to cover even an offer or promise, by proper noble and harmless measures, of prosperity and happiness to the entire nation (not merely the constituency) or humanity in general. For, the nation (and humanity) is constituted only by persons. We feel that the legislature could not have intended that such a narrow interpretation should be put on the above phrase. We feel that a liberal and reasonable interpretation should be made. We are inclined to hold that offer of land and cattle to the landless and the poor, irrespective of caste, creed, community and religion, does not constitute an offer of such a nature as to constitute an offence. For, giving of land to the landless and improving the position of the poor in general is in line with the lessening of inequality of wealth and income which is a commonly accepted aim and object of statesmen and Governments in most modern democratic countries. We feel that the offer (or promise) made by the 1st respondent in his speech lacks that element of corrupt motive and improper and unfair intention which is contemplated by the legislature (by a reasonable and proper interpretation of the section) as necessary to make out the corrupt practice of bribery under Section 123(1).

14. The following facts also go to show that the aim of the 1st respondent in addressing the meeting was not to hold a secret conclave or conspiracy to induce gullible and poor people by unfair means and with corrupt motives to vote for him at the elections:—

- (i) The meeting was open to the public. It was not meant exclusively for poor people alone or for any sect or community. As a matter of fact, P.Ws. 7, 8 and 9 who are Kallaryo's of Pillayarnatham and owners of lands, attended the meeting. P.W. 10 also says that the Harijans of his Cheri were owners of land and that he himself owns land.
- (ii) The offer was obviously meant for all poor people, not merely for those who voted for the 1st respondent.
- (iii) The offer was not meant for benefit of the audience alone. It was meant to benefit poor and landless people who were not present in the audience and who were not in the constituency and even those who had no votes or did not vote for the 1st respondent. On the other hand, the offer was not for benefit of well-to-do, men who owned plenty of lands and cattle even if they were present in the audience and were willing to vote for the 1st respondent.

- (iv) The offer by the 1st respondent was not meant to be understood as an offer by himself in his personal capacity or from his personal property or possessions. The 1st respondent is not a well-to-do-man. (The joint family of himself and his father and brothers owns only 3 or 4 acres).
- (v) The 1st respondent said openly that he intended to carry out his policy by legislation (P.W. 7's evidence). So, we find that the action of the 1st respondent in addressing the meeting and making his speech at Thennankudi does not amount to a corrupt practice.

15. P.Ws. 10, 20, 21 and 22 have also deposed to an incident in the village of Siralur, close to Thennankudi.

16. P.W. 10 is one of the five Pallar *Nattamais* of the Harijan Cheri and stated as follows:—After the meeting at Thennankudi was over, 1st respondent with Sundararajalu and Ekambara Nattar came to the Kalliamman Temple in the Cheri. He sent for all the *Nattamais* of the Cheri (five of the Pallars and two of the Parayars) and gathered through them, all the other Pallars and Parayars (of the Cheri). He told them "You must vote for me. I will get and give you plough bulls. I will get you land and give you land. The *Nattamais* had a talk among themselves and then decided in the presence of the 1st respondent that all their people should vote only for the 1st respondent and not for any one else." Then, after garlanding the 1st respondent with sickle and Sheaves (said to be the symbol of the Communist party), the *Nattamais* told the Pallars and Parayars in the presence of the 1st respondent "If any of you do not vote for the 1st respondent, we will ostracise him socially and make him a singleton all by himself without social intercourse with others".

17. The evidence of P.Ws. 20 to 22 is substantially the same, but contains a development as follows:—(i) That the 1st respondent promised 5 acres and one pair of bulls, (ii) P.W. 20 would raise the decision of the *Nattamais* to the level of a part with the 1st respondent and of an edict to the Harijans, (iii) due to the desire for the promised land and due to the edit passed and the fear of *Kattupadu* (ostracism), the Harijans voted in large numbers for the 1st respondent.

18. We are unable to accept the evidence of P.Ws. 10 and 20 to 22 for the following reasons:—(i) the petitioner's case in the petition that the threat was held out to the Harijan Community at Thennankudi also, was given up at the trial. No evidence was let in on that point and none of the Thennankudi Harijans who were cited in the witness list was examined. It was not put to any of the witnesses in the box that at the meeting at Thennankudi such threat was held out. (ii) P.Ws. 21 and 22 were not mentioned in the original list of the witnesses dated 11th October 1952. They were produced in Court on 14th November 1952 with a supplemental list of witnesses and examined on the same day. (iii) There is a development in the evidence of P.Ws. 20, 21 and 22 over the evidence of P.W. 10. (iv) It is not explained why any one of the Parayars or their *Nattamais* were not examined as to the happenings. (v) The 1st respondent as R.W. 11, swore that he never went to Siralur Harijan Cheri at any time. Sundararajalu (R.W. 3) who is said to have been with the 1st respondent deposed that he worked for Dr. Gopu (3rd respondent) and not for the 1st respondent. It was not even put to Sundararajalu (R.W. 3) or Ekambara Nattar (R.W. 4) when they were in the box, that they were present with the 1st respondent in the Cheri at Siralur. (vi) The way in which these witnesses (P.W., 10, 20, 21, 22) have spoken to the two cars working at the Thennankudi Polling Station the 1st respondent coming in a red car and so on, showed that they were partisan witnesses. P.W. 22 would go to the extent of saying 'Cars went in shuttle service'.....1, and simply scooped the voters and brought them five or six at a time to the polling station ( ).

The suggestion by the 1st respondent against these witnesses was that they deposed at the instance of Ramalinga Swami (a close relative of the petitioner who owns large extent of lands in the village of these witnesses) and P.W. 19, the Village Munsif, of the place. The witnesses denied this suggestion, but one witness P.W. 22 blurted out:—"Koonampatti *Ejaman* (Petitioner) asked me yesterday to give evidence". The evidence of P.Ws. 10, 20, 21 and 22 cannot safely be accepted and does not prove any bribery or undue influence as alleged by the petitioner.

19. The learned Advocate for the 1st respondent also contended as follows:—In the list appended to the petition, there is mention of incidents only as follows "Promise of land and cattle and the holding of threats in villages in Pillayarnatham Vattam". This tribunal called on the petitioner to furnish further and better particulars regarding the items given in his list in the petition. The petitioner then filed a supplemental list adding as follows:—" \* \* \* On or about 4th January 1952 at about 5 P.M. at the public meeting in Thennankudi in Pillayarnatham Vattam by the 1st respondent and another Rajagopalan \* \* \* and on or about the

same date, i.e., 4th January 1952, at about 9-30 P.M. near the Kallamman Temple in the Harijan Cheri attached to Siralur in Pillayarnatham Vattam by the 1st respondent and Rajagopalan aforesaid to the Harijan Community." Siralur is not within Pillayarnatham Vattam. Therefore the question of happenings in Siralur is not covered by the original petition and therefore cannot be the basis of any attack on the election of the 1st respondent.

20. We find that there is no need to go into this contention in view of the fact that we have found, on appreciation of evidence, that P.Ws. 10, 20, 21 and 22 are unreliable and that their version regarding Siralur incident cannot be accepted or acted upon to any extent.

We find issues 1 and 2 in the negative and against the petitioner.

21. *Issue No. IV.*—Petitioner's case is as follows:—1st respondent and his agent and those who worked for him, procured vehicles for the conveyance of electors to four polling stations i.e., Vallam, Budalur, Koonamangalam and Pillayarnatham, A van M.D.O. 1433 of T.K.S. family was used at Vallam. A green car was used at Budalur and another green car at Koonamangalam. Two cars, one black (M.D.T. 931) and the other grey, were used at Pillayarnatham. 1st respondent visited Budalur polling station at 9 A.M. sent for Vijayaraghavalu who was working for him and told him that he would send a car. Accordingly, a green car came at 10 or 10-30 A.M. and Vijayaraghavalu conveyed voters in it to the polling station. 1st respondent visited Koonamangalam polling station at 9-30 A.M. where a green car was being used for the conveyance of voters. 1st respondent visited Pillayarnatham polling station at 10-30 A.M. and took away the black car, leaving only the grey car which continued to convey voters to the polling station till evening.

22. Petitioner (P.W. 23) has no personal knowledge in this matter. Except for the van at Vallam for which the car number is given, no description of the other cars by colour or number is given in the petition. In a memo dated 25th October 1952, filed late, colours of the cars were given and the number of one car (black car) was given as M.D.T. 931. In his counter, 1st respondent denied these allegations in the petition. He stated that he did not go to Budalur, Koonamangalam, Vallam or Pillayarnatham, that he did not arrange for car to transport the voters to the polling stations and that neither he nor any agents of his used a black, green, or grey car in any one of the polling stations. He has further sworn that the car M.D.T. 931 was a small baby 'FORD' which he got from a relative for his own private use, that it was the only car at his disposal on the date of the election (and not a 'Fleet of Cars') and that he did not leave Tanjore town at all on election day. We are dealing below with the detailed evidence regarding individual polling stations:—

23. *Thennangudi Polling Station.*—The evidence on this point on the side of the petitioner is given by P.Ws. 7, 8, 9, 19, 20, 21 and 22. Their version is as follows:—Voters were brought to the polling station from the concerned villages in two cars, one black and the other grey, by the workers of the 1st respondent from 9 A.M. to 10 A.M. At about 11 A.M. the 1st respondent came in a red car, alighted at the place and then took away the black car with him.

P.W. 7 says that he was present (in the polling station) from morning till evening and that P.W. 8 was with him. P.W. 7 also says that R.W. 3 and Pichaya Nattar of Thennangudi (not examined as witness) brought the voters in the car to the polling station. But P.W. 8 says that R.W. 3 brought the voters in the car and that Pichaya Nattar (of Thennangudi) simply received the voters at the polling station. P.W. 9, the village munsif of Pillayarnatham who was on duty at the polling station says, that R.W. 3 and R.W. 4 and one Chinmaya Nattar were bringing the voters in the cars.

24. The defects in the evidence of these witnesses for petitioner are:—

- (i) P.W. 19 gives the number of only one car. That number too is not given in the petition or in the supplementary list. The other witnesses do not give the number of any car.
- (ii) No complaint was made to the police or any authorities who were available at the polling booth at the polling time. It is clear from the evidence that there were at the polling booth, polling agents of the petitioner as well as other congress workers. They would certainly have noted the numbers of the cars and made report if cars had been used for transporting voters unlawfully.
- (iii) No one except P.W. 8 gives the identity of any of the voters who were alleged to have been transported. It is not possible that everyone of those people transported was a stranger to everyone of these witnesses (i.e. P.Ws. 7, 9, 19 and 20). They are people of the vicinity.

The evidence of P.W. 8 mentioning names of four Harijans as transported is not satisfactory. None of the four persons mentioned by him as transported has been examined as witness.

- (iv) The explanation of P.Ws. 7 and 8 for their presence at the polling station from morning till evening is merely that they were watching the crowd and fun. This explanation is not acceptable, particularly when considered with the other defects mentioned above.
- (v) There is discrepancy among witnesses as to which man or men brought the voters in the cars and which man stayed at the polling station and received the voters who were brought in the cars.
- (vi) P.W. 19 is now the village munsif of Siralur. On the day of election, he was not the village munsif. He says that he was staying indoors in his house due to illness. He also says that he saw a black car M.D.T. 931 come and stand in front of his house with Ekambara Nattar in it and that he saw the latter taking voters in the car in two trips for voting. He does not attempt to specify by name, a single one of the men taken in the two trips, who were men of his village and street. The fact that he gives the number of the car as M.D.T. 931 is not entitled to any special value. For, admittedly, the car belonged to the 1st respondent's relative and was being used by the 1st respondent for election purposes (other than transport of voters) and its number must have been known to many people.

25. The 1st respondent says that he was himself using the car, that on the day of election he inspected only the polling stations within Tanjore town, that he never went out of the town, that no car worked for him at any booths and that as a matter of fact he had given instructions definitely, to people who worked for him on election day, that they should not engage cars or take voters in engaged cars. He also says that R.W. 4 was his polling agent at Thennangudi on the election day and that he does not know any one called Chinnayya Nattar or Pichaya Nattar of Thennangudi. If P.W. 19 had noted the number of the car when it was working, the petitioner would have come to know about that before the day of filing of the petition and he (the petitioner) would and should certainly have mentioned the number in the petition or in the supplemental list filed by him. As a matter of fact no number has been mentioned in them. R.Ws. 3 and 4 swear that they did not bring any voters in any car from any village to the polling station at Thennangudi.

26. We find that the petitioner has failed to prove satisfactorily that voters were brought in car by the 1st respondent's people to vote at Thennangudi.

27. KOONAMANGALAM.—P.Ws. 11 to 15 deposed about the use of car in this area. Their evidence is to the following effect:—From 7 A.M. to 4 P.M. people of the 1st respondent brought voters to the polling station in a green car.

28. The defects in the evidence of these witnesses are:—

- (i) None of the witnesses is able to give the number of the car, though their case is that the car was working from 7 A.M. till 4 P.M.
- (ii) None of them gives the name of any of the voters who travelled in that car for voting (i.e. apart from the alleged agent of the 1st respondent).
- (iii) No one reported about the use of the car to any of the authorities at the polling station.
- (iv) There is discrepancy among these witnesses as to who brought the voters in the car from the villages. P.W. 11 says that it was Ganesa Udayar and Doraiayya Thenkondar (not examined as witness). P.W. 12 says that the men were Sappanimuthu (R.W. 9) and Ganesa Udayar. P.W. 13 mentioned Sappanimuthu (R.W. 9) alone. P.W. 15 mentioned R.W. 9 and Doraiayya. P.W. 14 mentioned that the men who brought the people from Rayandur were Varadarajulu and Sundararajulu (not examined).
- (v) None of the persons alleged to have been transported by the cars has been examined as a witness. P.W. 15 says that voters were being brought within 10 yards of the polling station and that still, the police who were on duty did not prevent it and that he (P.W. 15) did not complain. It is not possible to believe this statement, especially because P.W. 15 was the polling agent of the petitioner.

29. On behalf of the respondent, R.Ws. 5, 9 and 11 deposed in the matter. R.W. 11 (i.e. 1st respondent) says that he did not at all visit the Koonamangalam Polling Station and that no car worked for him to bring voters to that polling

station. R.W. 5 the village munsif of Chitrakudi was on duty at the polling station throughout. He said that the Tahsildar had issued strict instructions to him and other village officers that if any car brought voters to the polling station they should detain it and hand it over to the police. R.W. 9 was the authorised polling agent of the 1st respondent in Budalur polling station about three miles off. He deposed that he did not transport any voters to Koonamangalam polling station by car and that he was really functioning as polling agent at Budalur polling station and simply went to Koonamangalam polling station at about 4-30 P.M. to cast his vote. The village munsif of Chitrakudi (R.W. 5) corroborated R.W. 9 by saying that R.W. 9 came to Koonamangalam Polling Station only at 4-30 P.M. He also stated that Varadarajulu and Sundararajulu of Rayandur worked for Gopu (3rd respondent). R.W. 11 says that he does not know Sundararajulu of Rayandur or Varadarajulu. In view of the vital defects in the evidence of P.Ws. in this matter, it is not possible to believe their version that voters were being conveyed in the car on behalf of the 1st Respondent to the polling station. There is no need to discuss in greater detail, the evidence of 1st respondent's witnesses in the matter.

30. *Budalur Polling Station.*—P.Ws. 16 and 17 speak about this polling station. Their version is as follows:—P.W. 16 was the polling agent of the petitioner at Budalur. P.W. 17 owns a paddy munda close to the polling station. At 9 A.M. on election day, the 1st respondent came in a red car, secured the presence of Vijayaraghavan and told him "I will send car. See that voters are taken in it quickly and that they vote briskly" P.W. 17 saw and heard this when he was just watching the crowd from his munda. At about 10 A.M., a green car came. Vijayaraghavan went in the car and brought voters in it to the polling station for voting for the 1st respondent. P.W. 16 saw the car bringing four or 5 trips (of four or five people at a time) till 10 A.M. P.W. 17 saw four trips.

31. The evidence of these witnesses is vitiated by the following defects:—

- (i) No complaint was made by P.W. 16 or anybody else to the authorities. P.W. 16 was polling agent of the petitioner and also related to him, besides being a member of the Congress Panchayat.
- (ii) It is very unlikely that if the 1st respondent wanted to announce to his man, that he would be sending his car for transport of voters (unlawfully), he would choose to do so openly in the presence and within hearing of petitioner's polling agent P.W. 16 and of bystanders including P.W. 17.
- (iii) No attempt has been made by P.Ws. 16 and 17, who are men of Budalur, to give the identity of a single person out of the many voters who are alleged to have been transported in the green car. The 1st respondent as R.W. 11 denies the truth of the evidence of P.Ws. 16 and 17.
- (iv) P.Ws. 16 and 17 are not able to give the number of the car or even the make of the car. (P.W. 17 says that he can distinguish between various makes of cars.). In view of the above defects, it is not possible to accept the evidence of P.W. 16 or P.W. 17.

There is no reliable evidence that voters were transported by car to Budalur polling station on behalf of the 1st respondent to vote. There is no need to discuss in detail the evidence on the side of the 1st respondent in this matter.

32. *VALLAM:*—P.W. 5 Narayanaswami Chettiar is a congress worker of Vallam who worked for the petitioner. He deposed as follows:—

A boy of chetty Street, who was working for the 1st respondent, took voters to polling stations in the van in four or five trips between 9.30 A.M. and 12 noon and unloaded voters close to the polling station. Duraiswamy Udayar R. W. (10) and T. K. S. Balasubramanyam (R.W. 8) told the voters who were dropped from the van at the polling station to vote for the 1st respondent. In the afternoon he saw the van coming once at 4.30 P.M.

P.W. 5 has not stated all this to the police when they examined him and recorded the statement Ex.A.3. His evidence that he saw the van coming once at 4.30 P.M. to the polling station cannot be accepted as he did not phone to the Collector about it though he says that he had already said in his phone message at about 12 noon that he would phone again if there was transport of voters after the lunch interval. Duraiswamy Udayar (R.W. 10) denies having worked for 1st respondent and having brought any voters in the van to vote for 1st respondent. T. K. S. Balasubramanyam (R.W. 8) was not even asked about it.

33. P.W. 5 did not complain to the presiding officer of the polling station though he had authority to enter the booth. Nor did he show the transport to the police who were admittedly on duty at the polling station. He stated that when Mr. Venkataraman (P.W. 24) came at 10 A.M. to the polling station and saw voters getting down from the van near the polling station, he mentioned the facts to him and that Mr. Venkataraman said he had to go away to other polling stations and would take action if possible and that, feeling that Mr. Venkataraman did not take action, he (P.W. 5) went at about 12 noon and phoned to the Collector. But his version to the police in Ex. A. 3 is quite different. Therein, he says as follows:—When Mr. Venkataraman came, he saw Hindu voters were being conveyed in the van of R.W. 6. The voters were getting down within 100 yards of the polling station, and Mr. Venkataraman (P.W. 24) questioned him (P.W. 5) as to who they were. P.W. 5 replied that they were not the family members or relatives of R.W. 6 but were private voters. Thereupon, P.W. 24 said that he would ask R.W. 6 himself immediately about it or take further steps in the matter. Within 15 minutes, he (P.W. 24) sent word through a messenger that he had given a telegram to the Collector. This suggests that it was not P.W. 5 who complained to Mr. Venkataraman (P.W. 24) in the first instance; but that it was Mr. Venkataraman who drew his attention to the matter and that he (P.W. 5) told him that voters were being conveyed in it. P.W. 24 does not say that he sent any messenger to P.W. 5 that he had sent any telegram to the Collector. R.W. 6 (Owner of the van) swore that his van was used in the morning to convey his own family and no other voters. In his statement before the police (Ex. B. 2), he has distinctly stated that he did not give his car to any one to convey "private" voters, and that no private voters were in fact conveyed. The Head Constable (R.W. 7) who was on bandobust duty on the election day stated that he was at the polling station during morning hours and no one complained to him that voters were brought in the van, and that the Sub-Inspector, another Head Constable and other police officers were also on duty on that day. His report to the Sub-Inspector is Ex. B. 3.

34. P.W. 18 is brother of the petitioner, P.W. 4 is a nephew of the petitioner residing at Marudur in Tiruchirappalli District. P.W. 6 is a merchant of Tiruchirappalli. Their evidence is as follows:—They went together to Vallam at about 3 or 3.30 P.M. Then, they saw a van M.D.O. 1433 going with load of gosha ladies to the polling booth. P.W. 18 wanted to make a complaint to the Sub-Inspector and so made enquiry at the polling station. He went to the polling booth, found the Sub-Inspector there and told him the facts. The latter took P.W. 18, the driver of the van, etc. to the polling station. The Circle Inspector of Thiruvayar (P.W. 3) was there. The Sub-Inspector recorded the statement of P.W. 18 (Ex. A. 4). The Circle Inspector (P.W. 3) received oral report in the matter and recorded statements Ex. A. 1 and A. 2 from P.Ws. 4 and 6. Then, the van M.D.O. 1433 came from the direction of Collector's bungalow i.e. the direction of the polling booth. At that time, the van did not have any passengers. He (P.W. 3) examined the driver of the van. The Sub-Inspector of Police recorded the statements of R.Ws. 1 and 8 and P.W. 5.

35. P.W. 18 swears that he saw the van going with a load of gosha ladies towards the polling booth and that he mentioned that fact to the Sub-Inspector when giving statements. But the statement Ex. A. 4 recorded from him by the Sub-Inspector does not mention that the van went towards the polling booth. P.Ws. 4 and 6 say, not that the van was going towards the polling booth, but that it was standing near the polling station with a load of gosha women. Ex. A. 1 and A. 2 are the statements given by the P.Ws. 4 and 6 to the Circle Inspector. In Ex. A. 2, P.W. 6 has stated that when he and P.W. 4 were standing at the bus stand a station wagon came near the bus stand full of gosha women at 3.45 P.M. and was proceeding towards the polling station and they reported it to the police. In Ex. A. 1, P.W. 4 endorses this version.

36. R.W. 1, Peer Muhammad, deposed to the effect that as jukas were not available, he borrowed the van from T. K. S. Balasubramanyam and took the women-folk of his family and some neighbouring Gosha women for voting, that they got down at the bus stand, and that the Sub-Inspector called him and recorded the statement Ex. B. 1. His evidence finds sufficient corroboration in Ex. B. 1. It is difficult to see why R.W. 1 should have agreed to give a false statement to oblige the Sub-Inspector who is said to be a friend of T. K. S. family (R.Ws. 6 and 8). It was suggested that R.Ws. 6 and 8 and Veeravu Udayar and Rengaswami Udayar were friends of the Sub-Inspector Sundararajulu Naidu, that therefore the latter hushed up the matter after recording statements Ex. B. 1 to B. 4. These suggestions are all denied by the witnesses. R.W. 8 swore that he never lent the van to R.W. 10.

37. P.W. 1 deposed that at 1 P.M., he saw the van of T. K. S. with 25 or 30 persons going to the polling station (3 males and the rest being gosha) and while the van was in motion near the polling station he heard R.W. 10 and Shunmugham Chetty say to the voters "vote for 1st respondent" and that half an hour later, he found another batch getting down from the van and going to the polling station. It is very strange that P.W. 1, who is a village munsif, did not point out to the police or complain to the presiding officer when voters were getting down from the van. P.W. 1's evidence cannot be accepted.

38. P.W. 2 deposed as follows:—At 7 A.M. when the 1st respondent arrived at Duraiswamy Udayar's house in a car, he went there and Duraiswamy Udayar asked him if he had a vote? He said 'Yes'. Then 1st respondent and Duraiswamy Udayar said: "The T. K. S. Van will come and all voters should go in it and vote". At 9 or 9.45 A.M. P.W. 2 saw the van full of voters going to the polling station past the Co-operative Stores where he (P.W. 2) was working. P.W. 2 went in the van in the third trip. He voted and returned in the van (which had in the meanwhile brought another batch).

That Duraiswamy Udayar (R.W. 10) who is said to have been working for 1st respondent, should have asked his neighbour only in the morning of the election day as to whether he had a vote is difficult to believe; also the alleged fact that 1st respondent said at that time that all should go in the van. The polling station is within 3 furlongs from the Co-operative Stores where he was working and he thought it necessary to go in the van to vote. P.W. 2 cannot be believed; his evidence is very artificial.

39. No doubt these broad facts appear from the evidence:—The van of T. K. S. M.D.O. 1433 was used on the election day. It conveyed to the polling station some voters. Among them were the owner (R.W. 6), his close relatives (R.W. 6's brother, wife, etc.), the friend R.W. 1 (who borrowed it from R.W. 8 on the basis of his personal friendship and not as connected with any candidate), and his relatives and close neighbours whom he (R.W. 1) took with him. An oral complaint was made by P.W. 5 to the Circle Inspector that the van was bringing voters. The police examined and recorded the statement from the driver of the van, the owner of the van (R.W. 6), his nephew (R.W. 8), the petitioner's brother (P.W. 18), P.W. 5 and others. Beyond these facts, there is no satisfactory evidence to connect 1st respondent or his agent or Shunmugham Chettiar or Duraiswamy Udayar (R.W. 10) with the transport of voters in that van. 1st respondent deposed that neither Duraiswamy Udayar (R.W. 10) nor Shunmugham Chettiar worked for him and that he did not know R.W. 6 or Shunmugham Chettiar. Duraiswamy Udayar (R.W. 10) denied that he worked for 1st respondent. Shunmugham Chettiar was not examined. T. K. Balasubramanyam (R.W. 8) knows Duraiswamy Udayar but he swears that he did not lend his van to him. Neither Duraiswamy Udayar nor Shunmugham Chettiar nor the Chetty Street Boy was even mentioned to the police by P.W. 5 in his statement Ex. A. 3. While P.W. 1 would say that Duraiswamy Udayar and Shunmugham Chettiar were bringing voters in the van, P.W. 5 would say that Duraiswamy Udayar and T. K. S. Balasubramanyam were receiving the voters at the polling station and that a boy of Chetty Street was bringing voters in the van.

40. Thus, on the whole, the evidence does not establish that the 1st respondent, or his agent or any person working on his behalf, conveyed any voters to the polling station at Vallam on his behalf.

41. We find Issue IV accordingly in the negative.

42. Issue V.—In view of the fact that we have found issues Nos. I to IV against the petitioner, we find that the petitioner is not entitled to any of the reliefs prayed for in paragraph 7 of the petition. We, therefore, dismiss the petition under Section 98 (a) of the Representation of People Act.

43. Under Section 99 (1) (b) of the Representation of People Act we direct the petitioner to pay the costs of the 1st respondent, fixing the total amount of costs payable to him at Rs. 250. The other respondents and petitioner will bear their own respective costs.

44. Under Section 99 (1) (a), we also find as follows:—

- (i) No corrupt or illegal practice has been proved to have been committed by or with the connivance of the 1st respondent (or any other candidate) or the agent of 1st respondent (or of any other candidate).

(ii) No one has been proved at the trial, by satisfactory evidence, to have been guilty of any corrupt or illegal practice.

Pronounced in open Court this the 26th day of December, 1952.

(Sd.) H. A. AYYAR,  
*Chairman.*

(Sd.) L. S. PARTHASARATHY AYYAR,  
*Member.*

(Sd.) V. C. VIRARAGHAVAN,  
*Member.*

*List of Witnesses*

*For Petitioner*

1. Sri Karuppudayar.
2. Sri Rengaswami.
3. Sri M. N. Raja (Circle Inspector of Police).
4. Sri Nallamuthu Nattar.
5. Sri Narayanaswami Chettiar.
6. Sri Palaniappan.
7. Sri Pichaya Nattar.
8. Sri Nithyanantham.
9. Sri Thyagaraja Nattar.
10. Sri Idumban.
11. Sri Thangaraju.
12. Sri Doralayya Thenkondar.
13. Sri Nataraja Thenkondar.
14. Sri C. Nataraja Thenkondar.
15. Sri Amirtha Thenkondar.
16. Sri Nataraja Viruthular.
17. Sri Krishnamurthi.
18. Sri Balasubramania Merkondar.
19. Sri Natarajan.
20. Sri Gopalan.
21. Sri Palaniandi.
22. Sri Poosari Karuppan.
23. Sri Swaminatha Merkondar (Petitioner).
24. Sri R. Venkataraman (M.U.P.).

*For 1st Respondent*

1. Janab Peer Muhammad.
2. Sri Peramayya Nattar.
3. Sri Sundararaja Nattar.
4. Sri Ekambara Nattar.
5. Sri Sundararaja Sundayar.
6. Sri Thirugnanam Pillai.
7. Sri Venkataraman (H.C. 601).
8. Sri T. K. S. Balasubramanyam.
9. Sri Sappanmuthu Thenkondar.
10. Sri Duraiswamy Udayar.
11. Sri S. Ramalingam (1st respondent).

*List of Exhibits  
For Petitioner*

- A1/12-1-1952. Statement of Sri Nallamuthu Nattar (P.W. 4) before the Inspector of Police (P.W. 3).
- A2/12-1-1952. Statement of Sri Palaniappam (P.W. 6) before the Inspector of Police (P.W. 3).
- A2(a)/12-1-1952. Portion marked in Ex. A. 2.
- A3/13-1-1952. Statement of Sri Narayanaswami Chettiar (P.W. 5) before the Sub-Inspector of Police, Vallam.
- A4/12-1-1952. Statement of Sri Balasubramania Merikondar (P.W. 18) before the Sub-Inspector of Police, Vallam.
- A5/ Rough plan of Vallam polling station.
- For Respondent*
- B1/12-1-1952 Statement of Janab Peer Muhammad before the Sub-Inspector of Police, Vallam.
- B2/13-1-1952 Statement of Sri Thirugnanam Pillai (R.W. 6) before the Sub-Inspector of Police, Vallam.
- B2(a)/13-1-1952. Portion marked in Ex. B. 2.
- B3/12-1-1952 Report made by P.W. 7 (H. C. 601) to the Sub-Inspector of Police, Vallam.
- B4/12-1-1952. Statement of T. K. S. Balasubramaniam (R.W. 8) before the Sub-Inspector of Police, Vallam.
- B5/13-4-1952. Letter from General Manager, South Indian Railway to the 1st respondent, intimating termination of his services from 1-5-1951.

(Sd.) H. A. AYYAR,  
*Chairman.*

(Sd.) L. S. PARTHASARATHY AYYAR,  
*Member.*

(Sd.) V. C. VIRARAGHAVAN,  
*Member.*

[No. 19/18/52-Elec. III.]

**S.R.O. 113.**—WHEREAS the election of Jenab Amjad Ali of Goalpara Town, Assam and Shri Sitanath Brahma Choudhury of Bongalgaon, Goalpara District, Assam as members of the House of the People, from the Goalpara-Garo Hills constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Mani Kanta Das of Goalpara Town, Assam;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 45 OF 1952

**PRESENT:—**

Shri Ashutosh Das, Retired District Judge (West Bengal)—*Chairman.*

*Members*

Shri Umakanta Gohain, Retd. Addl. District Judge, (Assam).

Shri U. N. Bezbaruah, Barrister-at-Law, Gauhati.

Dated Gauhati, the 29th December, 1952

In the matter of a petition under Section 81 of the R.P. Act, 1951, calling in question an election;

And,

In the matter of rejection of Nomination-paper of the petitioner for election to the House of the People, from the Goalpara-Garo Hills Constituency, Assam, by the Returning Officer.

Mani Kanta Das—*Petitioner.*

*Versus*

1. Jonab Amjad Ali,
2. Rani Manjula Devi,
3. Sarat Chandra Brahma Dutta,
4. Satish Chandra Basumatari,
5. Sitanath Brahma Choudhury,
6. Surendra Mohan Sen Gupta—*Respondents.*

Petitioner, represented by Shri S. Lahiri, Advocate-General and others.

Respondent No. 1, represented by Shri S. K. Ghose, Shri B. C. Baruah, Advocates and others.

#### JUDGMENT

This petition calls in question the election of the returned candidate Shri Amjad Ali, respondent No. 1, to the General Seat of the Goalpara-Garo Hills Constituency, Assam, for the House of the People, mainly on the ground that the nomination-paper of the petitioner who stood as a candidate for election to the seat, was improperly rejected by the Returning Officer. That the petitioner was an elector of the constituency at the relevant time is not disputed. His nomination was rejected on the ground that he was disqualified as under Section 7(d) of the R.P. Act, 1951, and it will be worth-while to reproduce the order of the Returning Officer here which runs thus:—

"House of the People:—

Mani Kanta Das:—

Objection from Socialist Party:—

The candidate is a partner of "Das Transport Syndicate", Goalpara which has contract with Postal Department to carry mail and also other obligations, to Government to perform services. As such, he is disqualified under Section 7(d).

On behalf of the candidate, a registered sale-deed selling the candidate's share in the business on 20th November, 1951, is filed and it is said that the candidate has no interest or share in the business from 20th November, 1951 and that the candidate has already served registered notice on the Registrar.

Heard both the sides. Under Section 32 of the Indian Partnership Act, a partner can retire only after giving public notices; and according to provision the notices must be served on the Registrar and published in the Gazette and News papers. These procedures have not been adopted and from the copy of the Register obtained from the Registrar on 29th November, 1951 it appears that the candidate's name continues even on 29th November, 1951, i.e., after filing of the nomination-paper, as a partner of the said firm. The registered sale-deed, therefore, cannot take away the candidate's interest or share in the firm which the law gives him and the sale-deed is ineffective to take away his share and interest until all the provisions required by law are completed. As those provisions were not completed at the time of filing nomination, the nomination-paper is held invalid under Section 7(d), of R.P. Act, 1951 and as such rejected."

The petitioner's case is, in the main, as set out before the Tribunal in para. 9 of the election-petition, was really to challenge alone the view, taken by the Returning Officer that there had not in fact been a valid assignment of the petitioner's interest in a certain registered firm, under the name of "Das Transport Syndicate" at the relevant time, the firm having been under a contract with the Postal Department, representing the Central Government, to carry mail. At the opening of the case, the petitioner went to raise another issue of fact, namely, that he had indeed never any share or interest in the aforesaid contract to carry mail, as alleged, and the petitioner was not permitted to raise this issue of fact as it had no where in his pleadings before the Tribunal been specifically taken by him. The Tribunal's order on the point is made annexure No. 1 to this judgment. We may only further repeat in this connection that what we have already referred to in our above order, that the petitioner does not appear to have at all denied that as a partner of the aforesaid firm he had indeed a share or interest in the contract to carry mail, referred to above, and his only contention before the Returning Officer was that by virtue of the assignment, upon which he relied, his share or interest in the contract had ceased before the date of nomination, and, as such, any disqualification he might have had under Section 7(d) of the R.P. Act, 1951, had been removed.

The petitioner took also an objection in the case to the fact that nominations of respondents Nos. 1, 3, 4 and 6 were improperly accepted by the Returning Officer which he gave up at the time of hearing. Another objection on the score that the Returning Officer adjourned scrutiny of the nomination-papers of the candidates till the next day, without holding the same on the date notified was also given up at the end, because no evidence of the result of election having been materially affected by reason of this alleged non-compliance with the Rule by the Returning Officer, was furnished.

The respondent No. 1 pleaded in his written statement, in substance, that the assignment alleged by the petitioner was not a real transaction, and it did not really affect the interest of the petitioner under the contract in question. That the assignment too was not one which was effective in law. That the Returning Officer's order of rejection of the petitioner's nomination was quite proper.

The respondents Nos. 3, 5 and 6 appeared to file written statements in the case, but they have failed to make any appearance in the case since, and it does not appear necessary to refer to their pleadings here separately.

Issues were framed in the case, as follows:—

1. Was the petitioner disqualified as under Section 7(d) of the R.P. Act, 1951, as held by the Returning Officer, or, was his nomination improperly rejected?
2. If the latter, has this materially affected the result of the election?
3. Were the nominations of respondents Nos. 1, 3, 4 and 6 improperly accepted, as alleged in the election petition and, if so, has any of these materially affected the result of the election?
4. Was there any irregularity committed by the Returning Officer in holding scrutiny of the nomination on an adjourned date? If so, has this materially affected the result of the election?

As already noticed, issues Nos. 3 and 4 were not pressed at the end, and the objections are over-ruled.

*Issue No. 2.*

If indeed there is found in the case that the nomination paper of the petitioner had been improperly rejected, that the result of the Election was materially affected, will necessarily follow. So, the only issue left for our decision is issue No. 1.

*Issue No. 1.*

In considering the issue, the initial position of the facts as we take settled, is that there was a certain firm having its principal place of business at Goalpara Town, as went under the name of "Das Transport Syndicate" and as was registered in July, 1949. The petitioner Mani Kanta Das, his wife, the brother of the latter, Shri Jogendra Narayan Das, and, lastly, the wife of the last, Prababhati Das, were the partners of the firm. The firm entered into a contract with the Central Government in the Postal Department, to carry mail, and this contract between the Central Government and the aforesaid firm was subsisting till about the relevant time. The case of the petitioner is that his share or interest in the contract ceased before the date of nomination upon he and his wife, executing the deed of

assignment (Ext. 1) on 20th November, 1951, in favour of the remaining partners of the firm, the petitioner having filed his nomination paper on 28th November, 1951, the last date fixed for filing of the nomination papers. It may at once be observed here that a firm is not a juristic persona, and, it has no existence apart from the members who constitute the firm. The above contract must, therefore, be one between the Central Government on the one side, and all the four partners of the firm on the other.

The material point here for consideration thus resolves into whether by the above assignment the petitioner had really ceased to have any share or interest in the aforesaid contract, so as to remove his disqualification as under Section 7(d) of the R.P. Act, 1951, at the relevant time. We answer the point in the negative.

Under the provision of Section 32, Sub-section (2) of the Indian Partnership Act, the petitioner, as a retired partner could not have been discharged of his liability to the Central Government for acts of the firm done before the alleged date of retirement, except with the consent of the aforesaid Government. Further, the deed of assignment itself makes no reference to the contract, what is assigned under the deed, appears to be the share or interest in the business of the firm, and a certain motor bus. Though under the provision of Section 32(1)(a) of the Indian Partnership Act, a partner may retire with the consent of all the other partners, and such a consent is implied in the case, in that all the partners had been parties to the deed of assignment, this cannot be interpreted as sufficient to prove also the consent of all the partners so far as the rights and liabilities under the contract in question, were concerned. There was nothing in the document to show that there had, in fact, been at the same time, an agreement between the above two sets of the partners in respect of the rights and liabilities under the contract, either in respect of the past dealings or the future ones. At any rate, the liability of the other party to the contract namely, the Central Government cannot be held to have been discharged without any consent on their behalf, of which there is not even the suggestion, and this liability continuing, it cannot be held that the petitioner had ceased to have an interest in the contract in question, at the relevant time.

It was, however, contended on behalf of the petitioner that in spite of such liability continuing, the petitioner's share or interest in the contract may be held to have been terminated by the aforesaid assignment. We cannot at all agree in this view.

In the Indian Contract Act by Pollock and Mulla, 7th Edition at page 245 while dealing with the subject of performance of a contract, and discharge thereof, and, further, dealing with the subject of assignment of contracts under the above head, the Authors observe that broadly speaking the benefit of a contract can be assigned, but not the burden, without the consent of the other party to the contract; and this find support in some judicial pronouncements referred to in the same page of the book. Indeed, in our Statute, the principle has been adopted in the provision contained in Section 32, Sub-section (2) of the Indian Partnership Act. We are here also absolutely in the dark about the term of the above contract, so as to find whether this was one that had been fully executed so far as the petitioner and his partners were concerned, before the above assignment. If not, it continued to be of the nature of an executory contract and there can be in no case of such a contract, an assignment without the consent of all the parties to the contract.

In the above view of the law, we cannot hold that there had been either in law or fact a discharge of the contractual relation as between the petitioner and the Central Government, in relation to the aforesaid contract of carrying mail, and that at the relevant time. So, we hold that the petitioner did continue to be under disqualification, as provided in Section 7 (d) of the R.P. Act, 1951.

On behalf of the petitioner, another contention made is that a contract to carry mail is not really a contract of the nature contemplated by Section 7(d) of the R.P. Act and the words "any services" that occur in it do not cover such work. In support of this, we were referred to a short note of a certain English case, occurring at page 275 of "The English and Empire Digest" Vol. 36, (namely, Re—City of Londonderry Election Petition, 1860). Without the full report of the case being placed before us, we cannot place any reliance upon the short note, as we find here. Further, in Parker's "Election Agent and Returning Officer", 5th Edition, at page 52, we find a reference to the above case from which it would appear that the person sought to be disqualified did not really hold his contract directly under Her Majesty's Government, this being thus a case clearly distinguishable. We cannot accept the petitioner's contention that the contract to carry mail with the Postal Department of the Central Government would not fall here under Section 7(d) of the R.P. Act, 1951.

We now proceed to consider shortly some further points argued for the respondent. On behalf of the respondent it was contended further that the notice of retirement of the petitioner from the firm, not having been given to the Registrar of Firms, under Section 63(1) of the Indian Partnership Act, in the prescribed form, and that before the date of nomination, and, further, publication of the retirement not having been made in the local official Gazette, as required by Section 72(a) of the Indian Partnership Act also before the date of nomination, and, lastly, no publication of this retirement having been made in a local vernacular news paper which is required under the provision of Section 72(a) of the Indian Partnership Act, the assignment relied upon by the petitioner could not have removed his disqualification. In answer to this, it was argued on behalf of the petitioner that the delay in giving these notices is of no material consequence, and in support of this two English Cases, referred to in the "Indian Election Law" by Sarin and Pandit, at page 277, were relied upon. It is observed in the book that it had been decided in the English cases, referred to, that if there had been, in fact, an assignment of a contract before nomination, that would save a contractor from disqualification, though some formalities, connected with the assignment, might not have been gone through before then. Though the full reports of these English Cases also have not been placed before us, we find ourselves in general agreement with the principle, above enunciated. It appears that there is no time-limit fixed for giving these notices, either under Section 63(1) or Section 72(a) of the Indian Partnership Act, and the provision of the law is made obviously for the protection of the customers in respect of their future dealings which would not, of course, be affected in any way, without such notices having been previously given. But the fact remains that there must have been a valid assignment of a contract in such cases, and before the date of nomination in order to remove disqualification of a contractor and this not being established, the above principle, of law, as enunciated, is of no help to the petitioner. It may further be observed in this connection that from the evidence, it appears that at least the assignees in the case had given notices of this retirement to the Registrar of Firms, and in the prescribed form before the date of nomination, the notices having reached the office of the Registrar on 24th November, 1951. The notice appears to have been first published in the local official Gazette, on 5th December, 1951, but this, as already noticed, would have been of no material flaw if there had, in fact, been a valid assignment of the contract in the case. Lastly, however, it remains to be noticed that the lacuna remains in that the retirement has never been published in a local vernacular news paper up to date.

It was also argued on behalf of the respondent that there having been recorded no change in the constitution of the firm before the date of nomination, the petitioner was in law estopped at the time of the nomination from raising the plea that he had indeed retired, and this, in view of the rule of evidence, provided for in Section 68 of the Indian Partnership Act. There can be no question of absolute estoppel in such a case. It was only a rule of evidence that is provided for in the above Section of the Act, which will raise only a strong presumption, which, however, is always rebuttable. Then this rule of evidence is obviously meant to apply to a case where a material issue arises upon this, with a certain customer in respect of any dealing. Again, as already noticed, there had, in fact, been given notice to the Registrar of Firms of the change in the constitution, by the assignees before the date of nomination, and the requirement of law in fact, been fulfilled thereby, and if the Registrar took no action on this notice given by the assignee, to change the record that was his fault for which the petitioner cannot suffer.

Lastly, it was contended, on behalf of the respondent further that the assignment was really of a colourable nature which was not, in fact, really intended. We do not consider it necessary to enter into this issue, in view of our above findings. In the circumstance, we come to the view that the petitioner's case of an improper rejection of his nomination paper has not been established, and, we decide the issue No. 1 against the petitioner, and in the result, the election petition must stand dismissed.

About cost, we direct that the petitioner should pay this to the respondent as per schedule given hereunder:—

#### ORDER

The election petition is dismissed. The petitioner shall pay cost to the respondent No. 1 as per schedule below, to be recovered out of security deposit made by the petitioner, under Section 117 of the R.P. Act, 1951.

## SCHEDULE OF COST

			Rs.	a.
1. Lawyers' fee	...	...	50	
2. Vakalatnama	...	...	4	
3. Witnesses' expenses	..	..	02	3
Total			...	147 3

Rupees one hundred and forty seven and annas three only.

(Sd.) U. N. BENZBARUAH,

(Sd.) U. K. GOHAIN,

Members,

29-12-52.

(Sd.) A. DAS,

Chairman,

29-12-52.

## ANNEXURE No. 1.

Case opened. In opening the case, it was submitted by the learned Advocate for the petitioner that his case is not only that he had made an assignment of his share or interest as a partner in the Das Transport Syndicate on 20th November, 1951, but that, further, he had, in fact, no share or interest in any alleged contract with the Postal Department by the Das Transport Syndicate. On behalf of the respondent No. 1, objection was taken to this plea, being raised and it is submitted that the pleadings, as put forth in the election petition, do nowhere set out this ground of a material fact. In answer to this, we were referred by the learned Advocate for the petitioner to paragraph 5 of his election petition. The statement occurring there, that the petitioner had no share or interest in the alleged contract with the Postal Department, was only a case that is alleged to have been taken by the petitioner before the Returning Officer, though the order of the Returning Officer does not show that really any such ground was taken before him, and that it shows the only ground taken before him, was that the petitioner, having interest in the Das Transport Syndicate which had, in fact, been under the alleged contract with the appropriate Government, the petitioner had assigned his interest or share in the business in favour of the other partners. Apart from what we find from the order of the Returning Officer the above was indeed a material fact which had to be taken by the petitioner before the Tribunal specifically and it was not at all sufficient for him only to refer to the fact that he may have taken this ground before the Returning Officer. In paragraph 9 of the election petition, we find indeed the grounds upon which the petitioner bases his case before the Tribunal, and here too, while the Returning Officer's view that the assignment, relied upon by the petitioner, had not, in fact, been complete in law before the relevant time, was what was in substance questioned, nowhere do we find this above further fact, on which the petitioner now wants to rely, pleaded or even referred to. In view of the nature of the pleadings, as set forth in the election petition, we cannot allow the petitioner to raise this ground of fact here and on this point, as appears to us on an examination of the pleadings, his case has to be confined only to the issue whether there had been a valid cessation of his interest by reason of the alleged assignment in the above business before the relevant time. The petitioner is, therefore, to confine his case thus.

(Sd.) UMAKANTA GOHAIN,

(Sd.) U. N. BEZBARUAH,

Members,

22-12-52.

(Sd.) A. DAS,

Chairman,

22-12-52.

[19/45/52-Elec. III]

P. S. SUBRAMANIAN,

Officer on Special Duty.

